



The Interplay Between the Corporate Practice of Medicine and Management Services Organizations

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In a recent decision by the New York Court of Appeals, which is New York's highest court, the Court held that payors can withhold amounts paid to a provider if the provider violates the corporate practice of medicine by ceding too much control to a management service organization ("MSO"). Andrew Carothers, M.D., P.C. v. Progressive Insurance Company, Docket No. APL-2017-00225 (2019).

In this matter, Dr. Carothers established a professional corporation ("PC") to provide MRI services. The PC then agreed to lease MRI facilities and equipment from companies owned and controlled by non-physicians, which acted as an MSO to the PC. The PC provided MRI services to car accident patients, who assigned "no fault" insurance benefits to the PC, which then billed the insurance companies. The insurance companies began to withhold payments and the PC eventually filed suit to recover these payments. On appeal, the PC claimed the insurance companies needed to demonstrate fraud to deny payment, but the Court disagreed. The Court held that it is well settled in New York that an insurance company can "withhold reimbursement for no-fault claims that are provided by fraudulently incorporated enterprises to which patients have assigned their claims." The Court continued, however, and held that "fraudulently incorporated" may be misleading and does not actually require proof of fraud.

As in many jurisdictions, in New York, the corporate practice of medicine prevents unlicensed persons from exercising control of professional corporations because it would create an ethical conflict. In other words, it prevents medical services from being provided by unlicensed third parties with only monetary interests. Here, the jury found that the PC breached this rule by ceding too much control to non-physicians and, therefore, was "fraudulently incorporated." The Court agreed because: (i) the equipment leases were far above the fair market

value and, in one year, the Court found that the difference between fair market value and what was charged was \$4,680,000; (ii) the MSO had the right to terminate each lease without cause, regardless of payment, but the PC could not terminate the leases at all; (iii) Dr. Carothers barely provided oversight of the provision of medical services since he reviewed at most 79 reports out of a total of some 38,000, and he was not involved in evaluating or disciplining employees; and (iv) Dr. Carothers was not involved with the business operations and, instead, delegated duties to a non-physician, who ran the business of the P.C., and who funneled millions of dollars to herself and the MSO from the PC's bank account.

Considering that MSOs have been extremely popular, especially in venture capital deals, it is important to make sure that your corporate structure with the MSO is based on, among other things, fair market value and that physicians retain control over medical decisions. If you have any questions, please contact [Khaled J. Klele](#) or [Latoya Caprice Dawkins](#).

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